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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

JAN 29 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Transport Rate Structure and Pricing	)	CC Docket No. 91-213
	)	
Usage of the Public Switched Network by Information Service and Internet Access Providers	)	CC Docket No. 96-263
	)	

**COMMENTS OF THE INDEPENDENT  
TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

By: **INDEPENDENT TELEPHONE &  
TELECOMMUNICATIONS ALLIANCE**

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## **SUMMARY**

The Independent Telephone & Telecommunications Alliance ("ITTA") endorses the Commission's marketplace approach to access charge reform, with the strong caveat that the Commission reforms its competitive triggers that lift regulatory burdens as they are applied to mid-size independent telephone companies with less than two percent of the Nation's access lines nationwide ("Independent Telcos"). Rather than the competitive triggers proposed, the Commission should adopt competitive triggers that either mirror the interconnection obligations of the 1996 Act or recognize that if a state commission has approved an interconnection agreement with a new entrant that the Independent Telco should be entitled to pricing flexibility. In other words, the Commission should begin to provide pricing flexibility to Independent Telcos now as long as Independent Telcos have complied with the interconnection obligations contained in the 1996 Act or have entered into interconnection agreements that have been approved by the appropriate state commission.

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**COMMENTS OF THE INDEPENDENT  
TELEPHONE & TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits these comments in the above-captioned proceedings relating to the Commission's proposed approaches to access rate reform and deregulation. In particular, the Commission's market-based approach to access reform, which in a broad sense is the appropriate approach to achieving deregulation, fails to include appropriate market conditions that would act as market signals for the removal of existing regulatory constraints on mid-size independent telephone companies with less than two percent of the Nation's access lines nationwide ("Independent Telcos").<sup>1</sup> ITTA submits these comments so that the Commission will adopt appropriate market signals for Independent Telcos given the highly competitive environment in which they operate.

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<sup>1</sup> The members of ITTA are included as Exhibit A.

ITTA also proposes an alternative deregulatory approach for Independent Telcos that fosters competition for access services and enables marketplace forces to eliminate the need for regulation of these services.

## **I. INTRODUCTION**

Over three years ago, 17 independent telephone companies joined together and formed the ITTA to draw attention to the unique needs of the independent telephone industry and to create a strong, unified voice for independent telephone companies as Congress considered the Telecommunications Act of 1996 (the "1996 Act").<sup>2</sup> Since Congress enacted the 1996 Act, ITTA has participated in several Commission proceedings to ensure that Congress' recognition in the 1996 Act of the unique competitive position Independent Telcos have in a competitive marketplace, is implemented faithfully by the Commission. In these proceedings, ITTA has highlighted the anachronistic regulations facing Independent Telcos as they compete in a competitive telecommunications marketplace and has urged the Commission to reform the regulatory structure governing Independent Telcos. Simply put, Independent Telcos are too small to be a threat to the industry giants, yet they are too big to be afforded many of the regulatory protections available to hundreds of small LECs. By default, Independent Telcos are being suffocated by regulation that was designed for the industry giants.

For example, ITTA suggested that dominant carrier regulation of both an Independent Telcos' offering of exchange and exchange access services, with its attendant regulatory burdens, hamstrings Independent Telcos in their offering of telecommunications

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<sup>2</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

services as they face substantial competition from the likes of AT&T and the Regional Operating Companies.<sup>3</sup> In the same vein, subjecting Independent Telcos offering of interLATA services that are not offered through a separate subsidiary to dominant carrier regulation has become anticompetitive as lightly-regulated competitors can respond to shifts in the marketplace in a manner that Independent Telcos, saddled with dominant carrier regulation, cannot.<sup>4</sup> Indeed, ITTA submitted an affidavit of Bruce L. Egan, Professor of Economics at Columbia University, providing the economic underpinnings of non-dominant regulation for Independent Telco offerings of interexchange services on a non-separated basis. The simple facts are that Independent Telcos (1) lack market power in the interexchange market; (2) have not (and cannot) leverage their local facilities in an anti-competitive manner against their interexchange competitors; (3) have limited financial resources; and (4) are dwarfed by Bell Operating Companies and interexchange companies with which they compete.

ITTA also has urged the Commission to classify Independent Telcos as small businesses for purposes of Regulatory Flexibility Act analysis and removal of barriers to entry.<sup>5</sup> Independent Telcos will only survive in this new competitive marketplace if the Commission affords them the necessary regulatory flexibility to compete on the same terms and conditions as that of their larger and more powerful rivals.

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<sup>3</sup> Letter from the Independent Telephone & Telecommunications Alliance to Mr. William F. Caton, Acting Secretary, June 24, 1996 (forbearance suggestions by the ITTA).

<sup>4</sup> Comments of ITTA, CC Docket No. 96-149 (filed August 29, 1996); Reply Comments of ITTA, CC Docket No. 96-149 (filed September 13, 1996).

<sup>5</sup> Comments of ITTA, CC Docket No. 9-113 (filed September 27, 1996).

The Commission can use this proceeding to begin to regulate Independent Telcos in a rational manner that considers the economic realities and business pressures faced by them. To accomplish this objective, the Commission should reevaluate its proposed deregulatory approach to provide Independent Telcos with regulatory flexibility in the access and exchange access marketplace. In doing so, the Commission should provide regulatory parity to Independent Telcos similar to the regulatory regime of AT&T and others that are in direct competition with Independent Telcos in local markets.

**II. THE COMMISSION'S MARKET-BASED APPROACH, RATHER THAN A PRESCRIPTIVE APPROACH, IS THE APPROPRIATE APPROACH TO ACCESS RATE REFORM AND DEREGULATION.**

The Commission has proffered two proposals to achieve access charge reform that fosters competition for these services and enables marketplace forces to eliminate the need for regulation of these services. (§ 140). The first approach relies on marketplace pressure to move interstate access prices to competitive levels, whereas under the second approach, the Commission would require LECs to move their prices to specified levels and allow LECs limited pricing flexibility until they can demonstrate they face actual competition for access services.

The Commission has tentatively concluded that its proposals for access reform and deregulation will, in general, apply to price cap companies only. (§§ 50-51) ITTA suggests that in light of Independent Telcos' unique market position, that ITTA's deregulation proposal apply to both price cap and rate of return Independent Telcos. Regardless of whether Independent Telcos are regulated using price caps or rate of return, Independent Telcos are in need of the regulatory flexibility to compete in the newly competitive telecommunications services marketplace.

ITTA endorses the marketplace approach, with the strong caveat that the Commission reforms its market signals that lift regulatory burdens as they are applied to Independent Telcos. Rather than the competitive triggers proposed, the Commission should adopt a model predicated on the interconnection obligations of the 1996 Act or recognize that if a state commission has approved an interconnection agreement with a new entrant that the Independent Telco should be entitled to pricing flexibility. In other words, the Commission should begin to provide pricing flexibility to Independent Telcos now as long as Independent Telcos have complied with the general interconnection obligations contained in the 1996 Act<sup>6</sup> or have entered into interconnection agreements that have been approved by the appropriate state commission.

A marketplace approach would not only be administratively easier for the Commission to implement, but it also ensures that the Commission would not have to establish price levels for access services throughout the country. In light of Independent Telcos' distinct and smaller operating territories, it would be difficult for the Commission to develop prices that are compensatory based on the varied nature of Independent Telcos' territories and the network in place to serve those territories. Accordingly, the Commission's resources are better used to implement a regulatory structure for Independent Telcos that is consistent with Congress' vision of a competitive market.

The Commission posits that it may be "difficult to develop reliable, administratively simple criteria for assessing evidence of competitive entry and determining the

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<sup>6</sup> 47 U.S.C. § 251(b).



existing regulatory constraints that should be relaxed based on such a showing.” (§ 142) Under the approach that ITTA recommends below, however, this concern is eliminated.

### **III. THE COMPETITIVE TRIGGERS PROPOSED BY THE COMMISSION ARE INAPPROPRIATE FOR INDEPENDENT TELCOS.**

The Commission’s proposed marketplace approach contemplates two distinct phases. (§§ 161-67) In the first phase, LECs would be required to open their networks to competition and in the second phase, LECs would have to demonstrate an actual competitive presence in the market. If all of the competitive triggers in each phase are met, LECs would be afforded increased pricing flexibility to meet competitive pressures.

In particular, if the a LEC’s network is open to competition (that is, the competitive triggers in the first phase have been met), the Commission would lift four regulatory constraints, including: (1) the prohibition against geographic deaveraging within a study area; (2) the ban on volume and term discounts for interstate access services; (3) the prohibition against contract tariffs and individual request for proposal responses; and (4) various restraints on the ability of incumbent LECs to offer new, innovative access services. (§ 168) The Commission has proposed that in order to eliminate these regulatory burdens, an incumbent LEC’s network will have been successfully opened to competition. If the competitive triggers in the second phase are met, the Commission would (1) eliminate price cap service categories within basket; (2) remove the ban on differential pricing for access among different classes of customers; (3) end the mandatory rate structure rule for transport and local switching; and (4) consolidate traffic-sensitive and trunking baskets. (§ 201)

The Commission’s proposed two-phased approach is too timid and is inappropriate for Independent Telcos. In particular, the Commission’s first-phase competitive

triggers exceed the interconnection requirements of the 1996 Act and are inappropriate for determining whether Independent Telcos should receive increased pricing flexibility now in order to respond to the increasing level of competition in their service areas.

Congress has already recognized that the *availability* from LECs of access and interconnection would be sufficient to achieve the competitive goals being sought in the 1996 Act. For example, the 1996 Act recognizes that Regional Operating Companies can meet the minimum requirements for in-region long distance entry by either a showing of active competition<sup>7</sup> or by an independent showing that “a statement of the terms and conditions that the company generally offers to provide such access and interconnection has been approved or permitted to take effect” by the relevant state commission.<sup>8</sup> If the offering of terms and conditions is satisfactory in the case of the Regional Operating Companies, it is difficult to understand why or how more should be demanded of Independent Telcos. Indeed, unlike in the case of the Regional Operating Companies, Congress has recognized that the interconnection requirements of Section 251(c) are not automatically and unexceptionably to be applied to the Independent Telcos.<sup>9</sup> Accordingly, ITTA’s proposal to require Section 251(b) interconnection is wholly consistent with the entire design of the 1996 Act with respect to such companies.

The eight competitive triggers that the Commission has proposed exceed a LEC’s interconnection requirements contained in Section 251(b) and (c) of the 1996 Act. ITTA recommends that the competitive triggers be limited to a showing by an Independent Telco that it

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<sup>7</sup> 47 U.S.C. § 271(c)(1)(A).

<sup>8</sup> 47 U.S.C. § 271(c)(1)(B).

<sup>9</sup> 47 U.S.C. § 251(f)(1) and (2).

has met the five requirements of Section 251(b)(1)-(5)<sup>10</sup> (resale, number portability, dialing parity, access to rights-of-way and reciprocal compensation for transport and termination) or if a state commission has approved an interconnection agreement between an Independent Telco and a new entrant.<sup>11</sup> If an Independent Telco makes the required showing, it should then be entitled to nondominant carrier regulation as well as the regulatory benefits that the Commission recommends in both its first and second phases. In other words, once the five requirements of Section 251(b) are met or a state commission has approved an interconnection agreement, an Independent Telco should be entitled to the same regulatory regime governing its biggest competitors in the market, namely AT&T and the Regional Operating Companies.

The Commission's proposed three pricing triggers (forward-looking prices for unbundled elements, incremental costs for transport services and resale wholesale prices based on avoidable costs) in the first phase, at best, are premature until the U.S. Court of Appeals for the Eight Circuit completes its review of the Commission's implementation of the local competition sections of the 1996 Act.<sup>12</sup> Moreover, the actual competition tests proposed in the second phase should be eliminated because they are unnecessary in the competitive environment in which Independent Telcos operate.

Independent Telcos already face competitive pressure from telecommunications giants like AT&T and the Regional Operating Companies, which ensure that Independent Telcos

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<sup>10</sup> 47 U.S.C. § 251(b)(1)-(5).

<sup>11</sup> 47 U.S.C. § 252(e)(1).

<sup>12</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996), Order on Reconsideration, CC Docket No. 96-98, 11 FCC Rcd 13042 (1996), *petition for review pending and partial stay granted, sub. nom. Iowa Utilities Board et. al. v. FCC*, No. 96-3321 and consolidated cases (8th Cir., Oct. 15, 1996).

do not abuse whatever perceived “bottleneck” control they may still possess. In an era of national and worldwide telecommunications competition, Independent Telcos exercise little, if any, market power because of their small operating territories that are highly vulnerable to competitive entry by telecommunications giants like AT&T and MCI, which, by contrast, are lightly regulated.

Regulation of local telephone companies historically was premised on the belief that these companies possessed the power to artificially inflate prices and to create a “price squeeze,” or to price selectively in a predatory fashion by lowering rates for some customers and recovering shortfalls from others through “cross-subsidization.” Changes in technology and Congress’ enactment of the 1996 Act have eroded the factual and legal premises upon which the Commission used to develop the current regulatory regime governing Independent Telcos, necessitating parallel changes in regulation.

Most notably, the 1996 Act abolished all state and local barriers to entry by any carrier into any interstate and intrastate market for telecommunications service.<sup>13</sup> The ability of an Independent Telco to directly prevent or to obstruct entry by a competitor, clearly, is now eliminated. Indeed, all LECs are now required to provide interconnection to these new entrants to ensure that the local marketplace for telecommunications services is actually open.<sup>14</sup>

Equally important is the fact that an Independent Telco cannot now utilize pricing mechanisms for its access services to indirectly achieve that same end. Market dominance through pricing gimmickry (whether in the form of excessive rates or unjustified rate

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<sup>13</sup> 47 U.S.C. § 253(a).

<sup>14</sup> 47 U.S.C. § 251(b).

differentials) can now be defeated simply by the entry of a second service provider. The power of this threatened entry has long been recognized and actively employed by the major interexchange carriers in their efforts to reduce the cost of local access. Independent Telcos are not free to charge what they will; they cannot, clearly, exercise that kind of market power.

The absence of market power is reinforced by the capabilities and resources of the competitors that many Independent Telcos now face. The Senate recognized that Independent Telcos may face “competition from a telecommunications carrier that is a large global or nationwide entity that has financial or technological resources that are significantly greater than [an Independent Telco’s] resources.”<sup>15</sup> Proving the foresight of Congress, AT&T has applied for local exchange authority in all 50 states,<sup>16</sup> and has recently begun to offer local telephone service for business customers.<sup>17</sup> In addition, MCI is rapidly entering local markets nationwide and offering switched local services to business and residential customers.<sup>18</sup> AT&T’s and MCI’s entry are not that of small, undercapitalized, start-up companies. Their “financial or technological resources” are indeed significantly greater than those of any of the Independent Telcos with which they will contend. AT&T also starts out with a huge lead over the typical Independent Telco, in terms of customer base and marketwide recognition. In these circumstances, it seems absurd to suggest that AT&T is the nondominant carrier requiring

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<sup>15</sup> S. Rep. No. 104-23, 104th Cong., 1st Sess. 2d (1995).

<sup>16</sup> “AT&T Officially Files to Offer Local Service in All 50 States,” *Washington Telecom Newswire*, March 4, 1996.

<sup>17</sup> “AT&T Takes First Steps Toward Launching Local Telephone Service for Business Customers,” News Release, AT&T, January 27, 1997.

<sup>18</sup> “MCI Urges Combined Price Cap-Access Charges Proceeding,” *Communications Daily*, December 11, 1996.

protection from subsidized services offered by an Independent Telco, such as Illinois Consolidated Telephone Company that operates in Mattoon, Illinois. Rather, the Independent Telco justifiably requires relief from regulatory obligations that promote an imbalance in favor of AT&T's competitive position.

Dominant regulation and other regulatory constraints imposed on Independent Telcos are no longer in the public interest. Because Independent Telcos are regulated at both the federal and state level, it is imperative that they have flexibility at each level so that they are not disadvantaged compared to other national telecommunications service providers that are lightly regulated at the federal level. For example, it is incomprehensible that AT&T is regarded as a non-dominant carrier, while Independent Telcos, with vastly smaller resources and market share, are classified as dominant carriers.

Excessive and unjustified regulation, in a competitive market, inhibits Independent Telcos from quickly responding to competitive pressures. For example, the time needed to prepare fully cost-supported tariffs (where applicable) coupled with the longer tariff notice requirements impair Independent Telcos ability to act quickly in the marketplace. These requirements also force an Independent Telco to reveal to its competitors in advance the fruits of its own analysis and initiative, thereby discouraging the introduction of new innovative service offerings. Further, dominant carrier regulation provides a vehicle for competitive harassment and delay by permitting challenges not to the merits of the filing, but to the technical details of the accompanying cost support materials.

Unequal regulation also imposes substantial compliance costs on Independent Telcos and on the Commission, in a time when resources on both sides are limited. As a result, these costs could prevent Independent Telcos from reducing their rates to compete in a

competitive marketplace. Conversely, declaring Independent Telcos non-dominant will not remove them from regulation entirely. As the Commission stated in declaring AT&T non-dominant:

AT&T will still be subject to regulation under Title II of the Act. Specifically, non-dominant carrier are required to offer interstate services under rates, terms and conditions that are just, reasonable and not unduly discriminatory (Sections 201-202), and non-dominant carriers are subject to the Commission's complaint process (Section 206-209). Non-dominant carriers also are required to file tariffs pursuant to our streamlined tariffing procedures (Sections 203-205) and to give notice prior to discontinuance, reduction or impairment of service.<sup>19</sup>

Likewise, Independent Telcos will continue to be subject to these same provisions of Title II of the Act as non-dominant carriers.

The 1996 Act also assures that there will be an adequate supply of providers of telecommunications services given the low barriers to entry and the interconnection obligations of telecommunications carriers. In light of this structure, Independent Telcos cannot exercise any market power because existing and future capacity restrains them from restricting output and raising prices.

#### IV. CONCLUSION

Independent Telcos exercise little, if any, market power in the rapidly evolving market for ever expanding service offerings. Conversely, it is relatively easy for competitors to enter Independent Telco markets and to provide real competition for access and exchange access services. As a result, Independent Telcos are simply incapable of setting rates at unreasonable or

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<sup>19</sup> *In the Matter of Motion of AT&T Corp. to be Reclassified as a Non-Dominant Carrier*, FCC 95-427 at ¶ 13 (October 23, 1995).

anticompetitive levels. No Independent Telco is capable of entering the marketplace in all 50 states simultaneously. No Independent Telco has the customer penetration or national name recognition of AT&T or numerous other competitors. No Independent Telco can effectively exercise market dominance in its service areas. ITTA's proposal ensures that Independent Telcos receive the right to compete more fully and fairly so that competition can proceed on the merits. Accordingly, the Commission should deregulate Independent Telcos once they can



demonstrate that they have met the interconnection requirements of the 1996 Act or have entered into an interconnection agreement approved by the appropriate state commission.

Respectfully submitted,

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January 29, 1997



**INDEPENDENT  
TELEPHONE & TELECOMMUNICATIONS  
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**ITTA MEMBER COMPANIES**

ALLTEL Corporation - Little Rock, AR  
Anchorage Telephone Utility - Anchorage, AK  
C-TEC Corporation - Wilkes-Barre, PA  
Century Telephone Enterprises, Inc - Monroe, LA  
Cincinnati Bell Telephone Company - Cincinnati, OH  
Citizens Utilities Company - Stamford, CT  
Concord Telephone Company - Concord, NC  
Illinois Consolidated Telephone Company - Mattoon, IL  
Lincoln Telephone Company - Lincoln, NE  
Lufkin-Conroe Telephone Exchange, Inc. - Lufkin, TX  
North State Telephone Company - High Point, NC  
Pacific Telecom, Inc. - Vancouver, WA  
Rock Hill Telephone Company - Rock Hill, SC  
Roseville Telephone Company - Roseville, CA  
Southern New England Telecommunications Corporation - New Haven, CT  
TDS Telecommunications Corporation - Madison, WIS